

NO. CAAP-15-0000467

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
JACQUELINE M. EARL, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CASE NO. 1DCW-15-0001089)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, and Leonard and Reifurth, JJ.)

Defendant-Appellant Jacqueline M. Earl appeals from the Notice of Entry of Judgment and/or Order, filed on May 19, 2015 in the District Court of the First Circuit, Honolulu Division ("District Court").¹ Earl was convicted of Criminal Property Damage in the Fourth Degree, in violation of Hawaii Revised Statutes ("HRS") § 708-823(1) (2014).² On appeal, Earl contends that there was insufficient evidence to convict her and that the

¹ The Honorable Shirley M. Kawamura presided.

² HRS § 708-823(1) states:

Criminal property damage in the fourth degree. (1) A person commits the offense of criminal property damage in the fourth degree if by means other than fire, the person intentionally or knowingly damages the property of another without the other's consent.

State failed to disprove her choice of evils defense under HRS § 703-302(1) (2014).³

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments they advance and the issues they raise, we resolve Earl's points of error as follows:

When the evidence adduced in the trial court is considered in the strongest light for the prosecution, *State v. Matavale*, 115 Hawai'i 149, 157, 166 P.3d 322, 330 (2007), the State adduced substantial evidence to support Earl's conviction.

"Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a man of reasonable caution to support a conclusion. And as trier of fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Batson, 73 Hawai'i 236, 248-49, 831 P.2d 924, 931 (1992) (citations omitted).

On February 14, 2015, Honolulu Police Department ("HPD") Officer Christopher Nutter observed Earl and others walking on Kapiolani Boulevard around 2:00 a.m. He observed Earl and at least four other people arguing, which escalated into yelling. After turning his vehicle around and pulling over, Officer Nutter observed Earl and another female fighting. Another officer sprayed Oleoresin Capsicum, commonly referred to as pepper spray. After other officers arrived, they pulled Earl

³ HRS § 703-302(1) states:

Choice of evils. (1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that:

- (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;
- (b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

and the other female apart. Earl and the other female were arrested and Earl was placed in a police car. Officer Jason Kubo testified that he also yelled at Earl and another woman to stop fighting but was ignored. Earl was able to deliver a couple more punches before he grabbed her arm and pulled her away. He could smell alcohol on both women. After grabbing Earl's arm, she continued to throw punches, so he deployed pepper spray. After spraying them in the facial area, he was able to pull Earl away and placed her in handcuffs to prevent further injury to both parties. Officer Kubo stated that Earl was screaming and seemed to be in distress from the pepper spray but did not recall Earl saying that she could not breathe. Officer Israel Prieto placed Earl into HPD vehicle 1210. Earl was screaming, "My eyes hurt." After Officer Prieto placed Earl in the backseat of the vehicle, Earl lay down and kicked out the window with both of her feet. Officer Prieto stated that Earl kicked the window at least twice. Earl was taken to Straub where she was cleaned up before being taken to the police station. Joseph Correa, III, an auto repair supervisor for the HPD Vehicle Maintenance Section, stated that it would take some force to cause the type of damage Earl caused to the window. Correa further stated that HPD Vehicle 1210 belonged to the City and County of Honolulu, Honolulu Police Department, and that no one had permission to damage the vehicle.

Earl testified that she was attempting to prevent an argument between two other people when she was attacked. She was pushed to the ground and did not know how another woman ended up on the ground. Earl stated that she has asthma and after she was sprayed, she was wheezing, had a hard time breathing, she complained about her eyes, and asked the officer if he could roll down the window. Earl stated that she was screaming at the top of her lungs over and over again, begging for an officer to roll down the window. Earl also stated that she could not see anything, her hair was in her face, and it felt like her whole head was on fire. Earl denied intentionally or knowingly kicking out the window and stated "I didn't even know I did that at all until they pulled - - I was in the car. The next thing I know

they're pulling me out and I didn't even know why." Earl stated that she did not mean to do that and apologized all the way to the station.

The District Court found the HPD Officers' and Correa's testimonies to be credible. "It is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses and the weight of the evidence; this is the province of the trier of fact." *State v. Mattiello*, 90 Hawai'i 255, 259, 978 P.2d 693, 697 (1999) (quoting *State v. Buch*, 83 Hawai'i 308, 321, 926 P.2d 599, 612 (1996)) (brackets omitted).

There was substantial evidence that HPD vehicle 1210 was damaged when its window was kicked out by Earl, no consent was given by HPD to damage HPD vehicle 1210, and that Earl kicked out the window. "[G]iven the difficulty of proving the requisite state of mind by direct evidence in criminal cases, 'we have consistently held that . . . proof by circumstantial evidence and reasonable inferences arising from circumstances surrounding the [defendant's conduct] is sufficient. . . . Thus, the mind of an alleged offender may be read from his acts, conduct and inferences fairly drawn from all the circumstances.'" *State v. Stocker*, 90 Hawai'i 85, 92, 976 P.2d 399, 406 (1999) (original brackets omitted) (quoting *State v. Mitsuda*, 86 Hawai'i 37, 44, 947 P.2d 349, 356 (1997)). Based on Earl's acts, conduct, and the inferences fairly drawn from all the circumstances, there was substantial evidence that Earl intentionally or knowingly damaged the window of HPD vehicle 1210 when she lay down in the vehicle and kicked the window with enough force to push it out.

The choice of evils defense is a type of justification defense. Haw. Rev. Stat. § 703-302(1) and cmt. "The prosecution disproves a justification defense beyond a reasonable doubt when the trial court believes the prosecution's case and disbelieves the defendant's case." *State v. Jhun*, 83 Hawai'i 472, 483, 927 P.2d 1355, 1366 (1996).

Therefore,

IT IS HEREBY ORDERED that the Notice of Entry of Judgment and/or Order, filed on May 19, 2015 in the District Court of the First Circuit, Honolulu Division, is affirmed.

DATED: Honolulu, Hawai'i, June 2, 2016.

On the briefs:

Alen M. Kaneshiro
(Alen M. Kaneshiro,
Attorney at Law)
for Defendant-Appellant.

Presiding Judge

Associate Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City & County of Honolulu,
for Plaintiff-Appellee.

Associate Judge